

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Devaughn Campbell,

Petitioner,

—v—

Timothy McCarthy, Superintendent of Auburn
Correctional Facility,

Respondent.

19-cv-2980 (AJN) (SLC)

ORDER ADOPTING REPORT AND
RECOMMENDATION

ALISON J. NATHAN, District Judge:

Before the Court is Judge Lehrburger’s Report & Recommendation recommending that the Court deny *pro se* Petitioner’s petition for habeas corpus under 28 U.S.C. § 2254. Dkt. No. 19.

When considering the findings and recommendations of a Magistrate Judge, the Court may “accept, reject, or modify [them], in whole or in part.” 28 U.S.C. § 636(b)(1). “The Court must make a *de novo* determination of any portions of a magistrate’s report or findings to which a party raises an objection, and reviews only for clear error on the face of the record when there are no timely objections to the Report & Recommendation.” *Banks v. Comm’r of Soc. Sec.*, No. 19-cv-929 (AJN) (SDA), 2020 WL 2765686, at *1 (S.D.N.Y. May 27, 2020) (internal quotation marks omitted); *see also Brennan v. Colvin*, No. 13-cv-6338 (AJN), 2015 WL 1402204, at *1 (S.D.N.Y. Mar. 25, 2015); *Hicks v. Ercole*, No. 09-cv-2531 (AJN) (MHD), 2015 WL 1266800, at *1 (S.D.N.Y. Mar. 18, 2015); *Gomez v. Brown*, 655 F. Supp. 2d 332, 341 (S.D.N.Y. 2009). Clear error is found only when, upon review of the entire record, the Court is left with “the definite and firm conviction that a mistake has been committed.” *Laster v. Mancini*, No. 07-CV-

8265 (DAB) (MHD), 2013 WL 5405468, at *2 (S.D.N.Y. Sept. 25, 2013) (quoting *United States v. Snow*, 462 F.3d 55, 72 (2d Cir. 2006)).

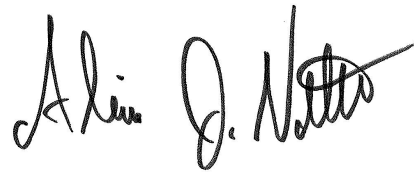
As of this date, no objections to the Report & Recommendation have been filed, and the deadline for objections has passed. *See* Dkt. No. 19 at 29-30. The Court thus reviews the Report & Recommendation for clear error. It finds none. Thus, the Court adopts the Report & Recommendation in its entirety and dismisses Petitioner's § 2254 petition for the reasons provided in Judge Lehrburger's Report and Recommendation. This resolves Dkt. No. 19.

Because Petitioner "has not made a substantial showing of the denial of a constitutional right, a certificate of appealability will not issue." *See, e.g., Perez v. United States*, No. 04-cv-7148 (JSR), 2007 WL 685949, at* 1 (S.D.N.Y Jan. 29, 2007) (citing 28 U.S.C. § 2253). The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore in forma pauperis status is denied for the purpose of an appeal. *See Coppedge v United States*, 369 U.S. 438, 444-45 (1962) (holding that an appellant demonstrates good faith when he seeks review of a nonfrivolous issue).

The Clerk of Court is respectfully ordered to mail a copy of this Order and of the Report & Recommendation, Dkt. No. 19, to the Petitioner. The Clerk of Court is further directed to close this case.

SO ORDERED.

Dated: January 21, 2021
New York, New York

A handwritten signature in black ink, appearing to read "Alison J. Nathan", with a stylized flourish at the end.

ALISON J. NATHAN
United States District Judge